

# Exhibit 2

**Nemet, et al. vs Volkswagen Group of America, Inc. et al.  
Peter Rossi, Ph.D. on 07/29/2020**

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DIVISION OF CALIFORNIA  
3  
4 IN RE: VOLKSWAGEN 'CLEAN ) Case No.  
DIESEL' MARKETING, SALES ) MDL No. 2672 CRB (JSC)  
5 PRACTICES, AND PRODUCTS )  
LIABILITY LITIGATION )  
6 \_\_\_\_\_)  
 )  
7 Nemet, et al. vs. Volkswagen )  
Group of America, Inc., et al., )  
8 Case No. 3:17-cv-04372-CRB )  
\_\_\_\_\_ )  
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11 VIDEOTAPED DEPOSITION OF PETER ROSSI, PH.D.  
12 (Conducted remotely through Remote Counsel  
13 videoconferencing)  
14 Witness Location: Peninsula Hotel  
Santa Monica Boulevard  
15 Los Angeles, CA  
16 Wednesday, July 29, 2020  
17 (Pages 1 through 206)  
18  
19

20 Reported remotely by:  
21 Janet M. Wood, CRR, RMR, CRC  
22 Certified Shorthand Reporter No. 9463  
23  
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11 Videotaped deposition of PETER ROSSI, PH.D.,

12 taken remotely on behalf of plaintiffs, beginning at

13 9:11 a.m. and ending at 4:02 p.m., on Wednesday,

14 July 29, 2020, before Janet M. Wood, Certified Shorthand

15 Reporter No. 9463.

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22 ALSO PRESENT:

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24 Huseby Global Litigation  
25 Emily Chapman, Remote Counsel Host  
Huseby Global Litigation

1 government or academics? Does the industry commonly use  
2 the Nash equilibrium?

3 A Well, this is -- I mean I don't mean to be  
4 flippant, but there are -- the school or view economics,  
5 so-called Chicago-based economics, which I -- I got my  
6 Ph.D. from the University of Chicago, that the view's  
7 that firms may act as though they are following this,  
8 and that's the sense in which there's a useful model.  
9 Even though they don't necessarily have to have any  
10 conscious notion.

11 In other words, you don't have to be a  
12 math- -- or the classic example is you do not have to be  
13 an expert in geometry to play billiards, but you may  
14 behave -- an expert billiard player --

15 Or, actually, maybe even a better analogy is  
16 you don't have to be an expert in thermodynamics and an  
17 aeronautical engineer to fly an airplane any more than  
18 you have to know anything about how cars work to drive a  
19 car; right?

20 So I may drive -- I may -- a good flier flies  
21 in accordance with aerodynamic principles, which are  
22 extraordinarily complicated and a highly mathematical  
23 idea. So it's possible.

24 So -- but to be very specific, firms in the  
25 automotive industry do not as a regular basis, to my

1 knowledge, compute these things. This is, I think, the  
2 situation.

3 It's also true that virtually no commercial  
4 applications of conjoint compute willingness to pay,  
5 which is what Mr. Gaskin's computing. This is a very  
6 unusual calculation; in fact, one that has been  
7 consciously de-emphasized.

8 Most firms do conjoint to make some sort of  
9 predictions about sales, demand forecast. That's why  
10 they're doing it -- right? -- in my experience, you  
11 know, and I've seen thousands of surveys.

12 So to answer your question, firms may act as  
13 though they are behaving according to the concept of  
14 Nash equilibrium. Any -- right? But they -- they are  
15 not exclusively doing it --

16 (Clarification requested by the  
17 reporter.)

18 THE WITNESS: The Nash equilibrium.

19 Even though they're not explicitly aware of  
20 it; right? Any more than -- right? -- that the -- the  
21 wheat farmers, you know, is a price taker, and that  
22 farmer doesn't have to understand what economists mean  
23 by "perfect competition."

24 So that's an answer to your question. And --  
25 and the objective here is to simulate a market price.

1 That may not be the objective of many commercial  
2 conjoint studies. May be to evaluate certain scenarios.  
3 Like if my competitor introduces the following product  
4 or changes their prices, what's going to happen to my  
5 sale, things of that sort, much more tactical, if you  
6 will.

7 So these -- the objectives are not always the  
8 same, and that's one -- another reason why I would say  
9 it's not. But it is -- it is true that in -- in  
10 commercial applications -- commercial analyses, firms do  
11 not routinely compute these things, market prices or  
12 simulated market prices, via any kind of calculation.  
13 That -- that is true, to the best of my knowledge.

14 BY MS. BOYD:

15 Q And what about in the context of litigation?

16 MR. STEINBERG: Objection to the form.

17 BY MS. BOYD:

18 Q Have you --

19 A Sorry.

20 Q Go ahead. No. I'll let you -- I'll let you  
21 go ahead and answer.

22 A Well, I was going to ask. Really,  
23 "litigation" is a rather broad word. And I have already  
24 said that in the antitrust context, these -- these  
25 models have become standard -- pretty much standard now

1 you -- which demand is less, willingness to pay is less,  
2 then people -- then on the supply side, you're not -- in  
3 a market equilibrium, sellers will be willing -- be  
4 willing to sell fewer -- fewer units. And that's what  
5 happens -- right? -- as a matter of sort of standard  
6 economic logic.

7 So all I'm suggesting is that difference in  
8 price is the overpayment premium. Okay. And you -- you  
9 apply that to the members of the class that you think  
10 are appropriate to apply it to.

11 But that premium comes from a difference in  
12 market price, and you have to allow for that to occur.  
13 That's essentially the problem with their -- with their  
14 measure, with the way they -- their procedure, I should  
15 say, is that they don't account for supply in any way.

16 And they -- they -- they -- they're aware of  
17 that, and -- and they just don't seem to be willing to  
18 respond to that.

19 Q So is it fair to say that in -- that your  
20 criticism of Mr. Gaskin and Mr. Weir is based on the  
21 idea that supply side factors would be different in a  
22 world in which consumer demand was lower?

23 A No. No. This is --

24 Q Okay.

25 A -- completely a misunderstanding of Mr. Weir.



1 with market price. I think it's the only logical and  
2 defensible, from an economic point of view, measure of  
3 value. And I don't dispute that, that we have that  
4 measure of value, because we know what they paid.

5 What we don't know is what they would have  
6 paid in the "but for" world. That's the essence of the  
7 problem.

8 Q So we need to know what plaintiffs received,  
9 the market price of what -- that would have existed --

10 A That's correct.

11 Q -- in order to value what they had received?

12 A Given the definition of the "but for" world,  
13 we need to calculate -- that's exactly right. You're  
14 exactly right. That is the essence of the problem.  
15 That's why Gaskin and Weir fail, because they don't do  
16 it and they can't do it on the basis of the information  
17 they provide.

18 Q What plaintiffs received in this case was a  
19 VW diesel vehicle containing a defeat device; is that  
20 correct?

21 A That's correct. That's correct.

22 Q Okay. So I am going to -- just for  
23 shorthand, I'm going to talk about a VW diesel vehicle  
24 containing a defeat device as a "dirty diesel." Okay?

25 I'm going to read you a definition. If you

1 could tell me if you agree with it.

2 "Fair market value for a vehicle is the  
3 highest price that a willing buyer would have paid on  
4 the date of the transaction to a willing seller if there  
5 was no pressure on either one to buy or sell and each of  
6 them knew all the uses and purposes for which the  
7 vehicle was reasonably capable of being used."

8 Do you agree with that definition?

9 A I think that -- that is the essence of a  
10 market equilibrium in a very simplified setting, yes.  
11 Yes.

12 Q Is that the essence of market equilibrium  
13 that would apply here?

14 A It's really the lowest price -- right? -- the  
15 lowest price that willing buyers would be willing to  
16 pay. Right. Because everyone who buys it has a  
17 willingness to pay equal to or greater than the market  
18 price. So it's the lowest price, not the highest price.  
19 It's the lowest price, if I can make that as a  
20 correction.

21 Q So, in your opinion, fair market value for a  
22 vehicle is the lowest price that a willing buyer would  
23 have paid on the date of the transaction to a willing  
24 seller if there was no pressure on either one to buy or  
25 sell and each of them knew all the uses and purposes for

1 which the vehicle was reasonably capable of being used?

2 A You know, that is true, but I would not call  
3 that a definition of market price. I think the  
4 definition of market price is a market equilibrium price  
5 in which the demand and supply forces are equalized.

6 And -- and that's -- I think that is the  
7 correct definition. And that -- that is going to be  
8 where -- in that setting where the willingness to pay on  
9 the part of buyers is equal to the willingness to sell  
10 on the part of sellers.

11 Q You think that market price is the same thing  
12 as fair market value?

13 MR. STEINBERG: Objection to the form.

14 THE WITNESS: I don't know what "fair" means.  
15 "Fair" may have some legal or moral implications.  
16 Economics is somewhat neutral regarding that.

17 I -- I do agree that a -- I would call it a  
18 market value. And the reason we endorse that is it's an  
19 objective measure of value. It's not a subjective  
20 measure. It's an objective measure that can -- that can  
21 be calculated and -- and is appropriate in this  
22 instance.

23 So that's what the goal should be. There's  
24 no disagreement between Mr. Weir and Mr. Gaskin and me  
25 on that. We both -- we all agree that we need to

1 establish a market price in the "but for" world, and we  
2 disagree on whether they've done that and whether they  
3 can do that. And they haven't done it and they can't do  
4 it and they know it.

5 BY MS. BOYD:

6 Q Do you agree that the market price -- that  
7 determining a market price requires a willing buyer?

8 A Yes. In -- in -- in the sense that a market  
9 equilibrium in a free market -- right? -- is a market --  
10 an unfettered market, in other words, un- --  
11 unconstrained by external authorities.

12 No one is forced to buy something they don't  
13 want to buy. So only -- the only people who buy it are  
14 the people whose willingness to pay is equal to or  
15 greater than the market price; right?

16 So people who -- for example, I'm someone who  
17 doesn't even want -- I don't use a car. My willingness  
18 to pay for a car -- that's not true of me. But -- but  
19 you can imagine that could be well the case that someone  
20 likes to walk or take public transportation. Their  
21 willingness to pay for a car could be very much below  
22 the market price. They're not in the market. They  
23 won't buy; right? And no one's forcing them to buy;  
24 right?

25 But people -- right? -- who the -- so it's

1 the fair market value of the dirty diesel that plaintiff  
2 Michael Skena purchased here would be the highest price  
3 a willing buyer of a dirty diesel would have paid on the  
4 date of the transaction at issue to a willing seller of  
5 a dirty diesel, assuming, one, that there is no pressure  
6 on either one to buy or sell, and, two, that the buyer  
7 and seller know all the uses and purposes for which the  
8 vehicle is reasonably capable of being used?

9 MR. WORK-DEMBOWSKI: This is Larry  
10 Work-Dembowski. Objection; form.

11 MR. STEINBERG: Join.

12 THE WITNESS: You know, again, this is this term  
13 "fair market value," which I think we discussed a little  
14 bit earlier. Obviously, you read this definition to me  
15 earlier. But we also discussed this term "fair."

16 This is a noneconomic concept, so I'm not  
17 exactly sure what is being said here, to be completely  
18 honest with you. And, you know, so, for example,  
19 imagine a world in which there's only two buyers.  
20 Right? And one buyer is willing to pay \$20,000 for  
21 the -- the vehicle in question, and another buyer is  
22 willing to pay \$200,000.

23 According to this definition, the fair market  
24 value would be \$200,000, and that does not accord with  
25 the economic definition of market value.

1 Market value comes from a market equilibrium.

2 This has some of the essence of that, but, if taken  
3 literally, it -- it doesn't comport with my  
4 understanding and definition and use of market price.

5 BY MS. BOYD:

6 Q Okay. But if it's -- if it is taken  
7 literally, if it's taken for what it is, for what --  
8 just for what it says on its face, is the fair market  
9 value of the dirty diesel that plaintiff Michael Skena  
10 purchased the higher -- the highest price a willing  
11 buyer of a dirty diesel would have paid on the date of  
12 the transaction at issue to a willing seller of a dirty  
13 diesel, assuming that there is no pressure on either one  
14 to buy or sell and that the buyer and seller know all  
15 the uses and purposes for which the vehicle is  
16 reasonably capable of being used?

17 MR. STEINBERG: Object to the form.

18 THE WITNESS: I do not understand the meaning of  
19 the term "fair market value." I do understand market  
20 price. I do not know what -- what is meant in this  
21 context by whoever wrote this of fair market value.

22 That is what it says. It is not --

23 BY MS. BOYD:

24 Q According to what it --

25 A -- market price.

1 Q According to what it says, would what I just  
2 said be true? Would that be the definition according to  
3 the words on the page that you're reading?

4 A I think so. But, again, this is -- I'm  
5 just -- you know, I'm not, again, here applying any of  
6 my expertise here because I'm not sure that my expertise  
7 in economics applies to the domain here. And the domain  
8 here seems to be some other legal domain, and I don't  
9 quite know what is meant.

10 And -- and the fair market value is in  
11 quotes -- put in quotes here. So --

12 Q Sure.

13 A And it does not -- it does not agree with the  
14 definition of a market price.

15 Q Okay. Under this definition, again, taking  
16 it on its face for the words on the page, if Michael had  
17 purchased two dirty diesels, the fair market value of  
18 those would be the highest price a willing buyer of two  
19 dirty diesels would have paid on the date of the  
20 transaction at issue to a willing seller of two dirty  
21 diesels, assuming that there is no pressure on either  
22 one to buy or sell and that the buyer and seller knew  
23 all the uses and purposes for which the vehicle is  
24 reasonably capable of being used; correct?

25 MR. STEINBERG: Object to the form.

1 THE WITNESS: I mean you've just rephrased the  
2 same thing by you inserting "two dirty diesels" or "one  
3 dirty diesel" for the implied product, whatever that  
4 product is. I guess here it's a car. So you're saying  
5 a car is a dirty diesel in one scenario, and in another  
6 case it's two dirty diesels. And I believe anything  
7 could be inserted. There could be a hundred dirty  
8 diesels. That -- that is what that's saying, you know,  
9 as a matter of -- of logic but not as a matter of  
10 economics.

11 BY MS. BOYD:

12 Q Okay. It could be anything. So if it was  
13 2,000 dirty diesels, then the fair market value of those  
14 would be the highest price a willing buyer of 2,000  
15 dirty diesels would have paid on the date of the  
16 transaction at issue to a willing seller of 2,000 dirty  
17 diesels, assuming that there is no pressure on either  
18 one to buy or sell and that the buyer and seller know  
19 all the uses and purposes to which the vehicle -- for  
20 which the vehicle is capable of -- is reasonably capable  
21 of being used; correct?

22 A We're just rereading a definition.

23 MR. STEINBERG: Objection to form.

24 THE WITNESS: If -- if I defined red means blue  
25 and I see red, then, according to that definition, it's



1 blue. I mean that's all you're -- you know, I don't --

2 I don't have any basis for evaluating this -- this --

3 this phrase here.

4 So I'm not sure it really helps to get my

5 opinion about any of this stuff because it's outside of

6 my domain. It is not what I understand to be and what

7 economists understand to be the definition of a market

8 price as written, word for word as written.

9 BY MS. BOYD:

10 Q Let's assume that VW would have sold one TDI

11 vehicle in a world in which the presence of a defeat

12 device was known.

13 (Clarification requested by the

14 reporter.)

15 MS. BOYD: In a world in which the presence of

16 the defeat device was known.

17 BY MS. BOYD:

18 Q Do you understand that assumption?

19 A I do.

20 Q Are you saying that the fair market value or

21 market price -- sorry. I'll just stick with market

22 price.

23 Are you saying that the fair -- that the

24 market price of each of the 550,000 TDI vehicles that VW

25 sold in the real world should be based on a "but for"

1 world in which only one vehicle was sold?

2 A That's correct.

3 MR. STEINBERG: Objection to the form of the  
4 question, incomplete hypothetical.

5 THE WITNESS: In that situation that you've given  
6 me.

7 BY MS. BOYD:

8 Q And is it your opinion, then, that that  
9 market price for that one vehicle would be an accurate  
10 indicator of value for the 550,000 class vehicles that  
11 were actually sold in the real world?

12 MR. STEINBERG: Object to the form.

13 THE WITNESS: If it's a properly computed market  
14 price, it would be acceptable. Of course, this is an  
15 absurdly extreme example that would never happen here.  
16 We're talking about price reductions. We're talking  
17 about reductions in demand that are much less than that.  
18 But that's correct.

19 The quantities sold in the "but for" world is  
20 not relevant. What is relevant is the market price that  
21 is established. And that differential would be part of  
22 a damages estimate, may not be -- it may be -- it may be  
23 offset completely, but it might be part of a damages  
24 estimate.

25 BY MS. BOYD:

Certification of Court Reporter

Federal Jurat

I, the undersigned, a Certified Shorthand  
Reporter of the State of California do hereby certify:

That the foregoing proceedings were taken  
before me remotely at the time and place herein set  
forth; that any witnesses in the foregoing proceedings,  
prior to testifying, were placed under oath; that a  
verbatim record of the proceedings was made by me using  
machine shorthand which was thereafter transcribed under  
my direction; further, that the foregoing is an accurate  
transcription thereof.

That before the completion of the deposition,  
a review of the transcript was not requested.

I further certify that I am neither  
financially interested in the action nor a relative or  
employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date  
subscribed my name.

Dated: August 7, 2020

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Janet M. Wood  
Certified Shorthand Reporter  
Certificate Number 9463